



The Comptroller General
of the United States

Washington, D.C. 20548

Backlund

Decision

Matter of: TLC Systems
File: B-231969
Date: September 13, 1988

DIGEST

1. The General Accounting Office will not review an affirmative determination of responsibility absent a showing of possible fraud or bad faith on the part of the procurement officials or that definitive responsibility criteria in the solicitation were misapplied.

2. Bidder may be allowed to revive its bid and extend its bid acceptance period after the bid has expired where the bidder originally offered the minimum acceptance period requested by the agency and where revival of the bid would not compromise the integrity of the bidding system.

DECISION

TLC Systems protests the award of a contract to King-Fisher Co. under invitation for bids (IFB) No. N62472-87-B-0415, issued by the Department of the Navy for a radio fire alarm system.

We dismiss the protest in part and deny it in part.

The Navy issued the IFB on February 24, 1988, and bid opening took place on March 25. King-Fisher submitted the low bid. By letter dated April 1, TLC protested to the Navy that King-Fisher was not a small business and that it would be unable to comply with certain specifications in the solicitation. While the agency-level protest was pending, the Small Business Administration (SBA) Regional Office notified the Navy in a letter dated June 6 that it had determined that King-Fisher was a small business under the size standard established for this procurement. On June 23, award was made to King-Fisher, and notice of award was sent to TLC on June 30. On July 13, TLC filed its protest with our Office.

In its protest, TLC again challenged King-Fisher's ability to comply with the IFB specifications and its small business

C43225/136790

status. (TLC has since agreed to the dismissal of its protest concerning the small business size status of King-Fisher.) In addition, TLC protests that King-Fisher's bid had expired and had improperly been permitted to be revived by the Navy.

Concerning King-Fisher's ability to comply with the specifications, the protester argues that King-Fisher will not be able to provide a system which is listed by the Underwriters' Laboratories, Inc. or approved by Factory Mutual Research in accordance with the National Fire Protection Association (NFPA) 1221 Standard as required by the solicitation.

King-Fisher did not take any exception to the specifications in its bid; therefore, the challenge to King-Fisher's ability to perform involves King-Fisher's responsibility. Because a determination that a bidder or offeror is capable of performing a contract is based in large measure on subjective judgments which generally are not readily susceptible of reasoned review, an agency's affirmative determination of responsibility will not be reviewed by our Office absent a showing of possible fraud or bad faith on the part of procurement officials, or that definitive responsibility criteria in the solicitation were misapplied. 4 C.F.R. § 21.3(m)(5) (1988); W. H. Smith Hardware Co., B-228576, Feb. 4, 1988, 88-1 CPD ¶ 110.

There is no evidence in the record to indicate fraud or bad faith on the part of procurement officials; TLC simply argues at length that King-Fisher cannot provide a system that is approved by Factory Mutual Research in accordance with the NFPA 1221 Standard. However, the Navy reports that King-Fisher assured the contracting officer, in writing, that its equipment would be approved by a nationally approved laboratory (Factory Mutual Research) before installation. The Navy also states that King-Fisher has a record of integrity and successful performance at numerous military installations worldwide. Thus, there is nothing to indicate that the contracting officer may have acted in bad faith or fraudulently in determining King-Fisher to be a responsible prospective contractor. Consequently, in our view, TLC's allegation that King-Fisher cannot comply with the solicitation requirements is merely speculation that King-Fisher is not responsible and is wholly inadequate to show bad faith or fraud on the part of the contracting agency. We therefore dismiss this ground of protest.

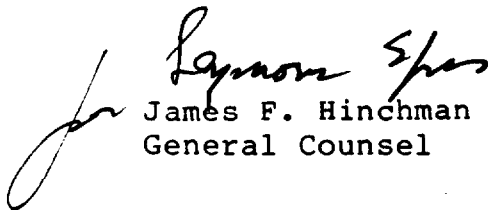
TLC also argues that award to King-Fisher is improper because King-Fisher's bid had expired before award and that a "time extension was not requested from the bidders by the

government facility." The IFB stated that "[o]ffers providing less than 60 calendar days for Government acceptance after the date offers are due will not be considered and will be rejected." King-Fisher's offer met this requirement, so the bid was to expire on May 24. In a letter dated June 7, King-Fisher extended its bid acceptance period through June 10, and in a letter dated June 22, extended its bid acceptance period through June 24.^{1/} The record does not contain any earlier extension.

Even if the King-Fisher bid had expired, we find nothing improper about reviving the bid under these circumstances. It is well-established that a bidder may extend its acceptance period and thus revive its expired bid if doing so would not compromise the integrity of the competitive bidding system. Grace Industries, Inc., B-229548.2, Dec. 23, 1987, 87-2 CPD ¶ 623. We have held that where the low bidder states that its bid will be open for the minimum bid acceptance period required by the solicitation and the bidder subsequently extends its bid acceptance period when requested to do so after the period had lapsed, the integrity of the bidding system is not compromised. W.A. Strom Contracting, Inc., et al., B-216115 et al., Dec. 26, 1984, 84-2 CPD ¶ 705.

Here, King-Fisher did not seek any advantage over other bidders. It offered the required 60-day acceptance period, which apparently expired during TLC's protest. Thus, in our view, revival of King-Fisher's bid under these circumstances does not prejudice the competitive bidding system. We therefore find no merit to this allegation.

The protest is dismissed in part and denied in part.


James F. Hinchman
General Counsel

^{1/} TLC argues that the Navy did not receive the above-mentioned letters until July 15, well after the award of the contract, based on an FAX code appearing on these letters. The record indicates, however, that July 15 is the date that the letters were transmitted via FAX from the Naval Facilities Engineering Command in Philadelphia to its Virginia office for preparation of the Navy's report to our Office. Our Office received copies of the FAXed documents dated June 7 and June 27 on July 15 at 4:54 p.m.